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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MONTREAL, QUEBEC

Date: APR 01 2005

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Port Director, Montreal, Quebec. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Canada who entered the United States on numerous occasions and was removed on October 30, 2000 as a consequence of his criminal conviction. The applicant is married to a U.S. citizen and has applied for a visa to reenter the United States. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The port director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant asserts that the crime he committed was not one involving moral turpitude, since he only served ten months in prison. He contends that he is therefore not subject to the grounds of inadmissibility set forth at § 212(a)(2)(A)(i)(I). The applicant maintains that he is of good moral character and has been rehabilitated since he committed the crime in 1999. He also states that his U.S. citizen wife needs him financially, physically, and emotionally.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects that on September 13, 1999, the applicant was convicted of conspiracy to utter counterfeit federal reserve notes, in violation of Title 18 U.S.C. § 371, for which he was sentenced to twelve months and one day incarceration. The applicant provides no basis or legal authority for his assertion that this crime does not involve moral turpitude. The Board of Immigration Appeals ("Board") held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

In addition, in *Matter of Katsanis*, 14 I&N Dec. 266, 268 (BIA 1973), the Board stated that "[m]oral turpitude attaches to crimes where fraud is an ingredient." (Citations omitted). Title 18, U.S. Code § 371, conspiracy to commit offense or to defraud United States, includes the following elements:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. . . .

It is apparent that the crime the applicant committed is one involving moral turpitude. He is, therefore, subject to the provisions of § 212(a)(2)(A)(i)(I) of the Act.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Since his criminal activity occurred less than fifteen years prior to this adjudication, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example,

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

On appeal, the applicant does not submit any additional documentation. The entire record has been reviewed, however, in the course of this adjudication. The applicant asserts that his spouse needs him financially. The documentation on the record does not establish that she is experiencing extreme economic hardship in his absence, nor that her possible relocation to Canada would cause the same. The record contains a medical letter establishing that the applicant’s wife was two months pregnant as of September 2003. It is thus presumed that she has since given birth. The record does not establish that the applicant’s wife has any medical problems or special needs, such that the applicant’s inadmissibility causes her extreme hardship.

The AAO acknowledges that the separation of spouses due to inadmissibility or removal necessarily causes emotional hardship. However, the documentation on the record does not reflect that the applicant’s U.S. citizen spouse is suffering or will suffer hardship unusual or beyond that which is normally expected in similar situations. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.